

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1943

No. 604

Supreme Court, U.S.
FILED

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CHARLES ELMORE CROPLEY
CLERK

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION (an unincorporated association);
DAVID DUBINSKY (as president of said
association); FREDERICK F. UMHEY (as
executive secretary of said association);
and LOUIS LEVY (as a vice-president of
said association),
Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALI-
FORNIA, IN AND FOR THE CITY AND COUNTY
OF SAN FRANCISCO, and HONORABLE
ELMER ROBINSON, as Judge of said
Court,
Respondents.

**PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal, State of California,
First Appellate District, Division One
and
BRIEF IN SUPPORT THEREOF.**

EMIL SCHLESINGER,
521 Fifth Avenue, New York City, New York,

S. HASKET DERBY,

JOSEPH C. SHARP,

1000 Merchants Exchange Building, San Francisco 4, California,
Attorneys for Petitioners.

MATHEW O. TOBRINER,

1035 Russ Building, San Francisco 4, California,

DERBY, SHARP, QUINBY & TWEEDT,

1000 Merchants Exchange Building, San Francisco 4, California,

Of Counsel.



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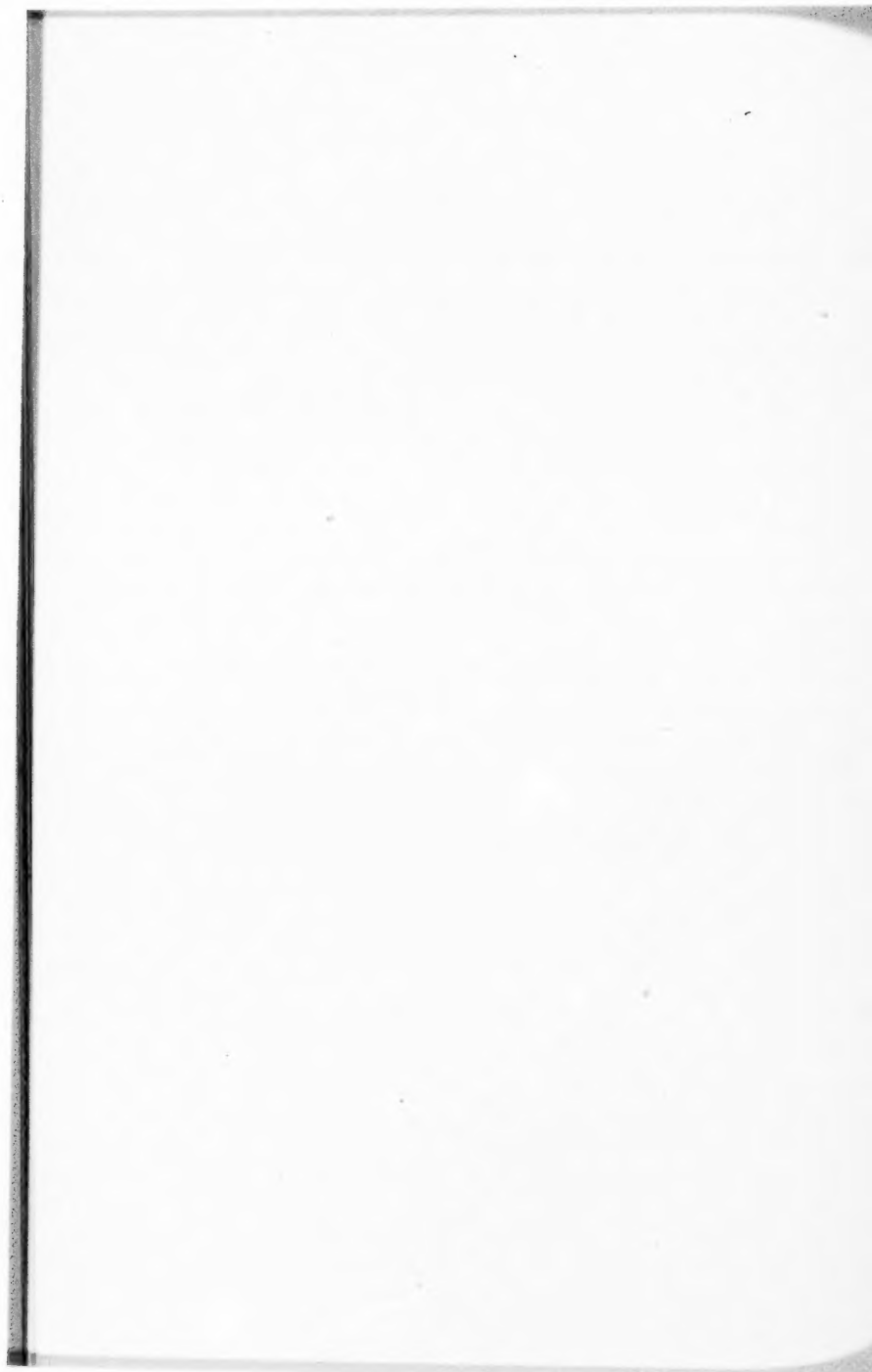
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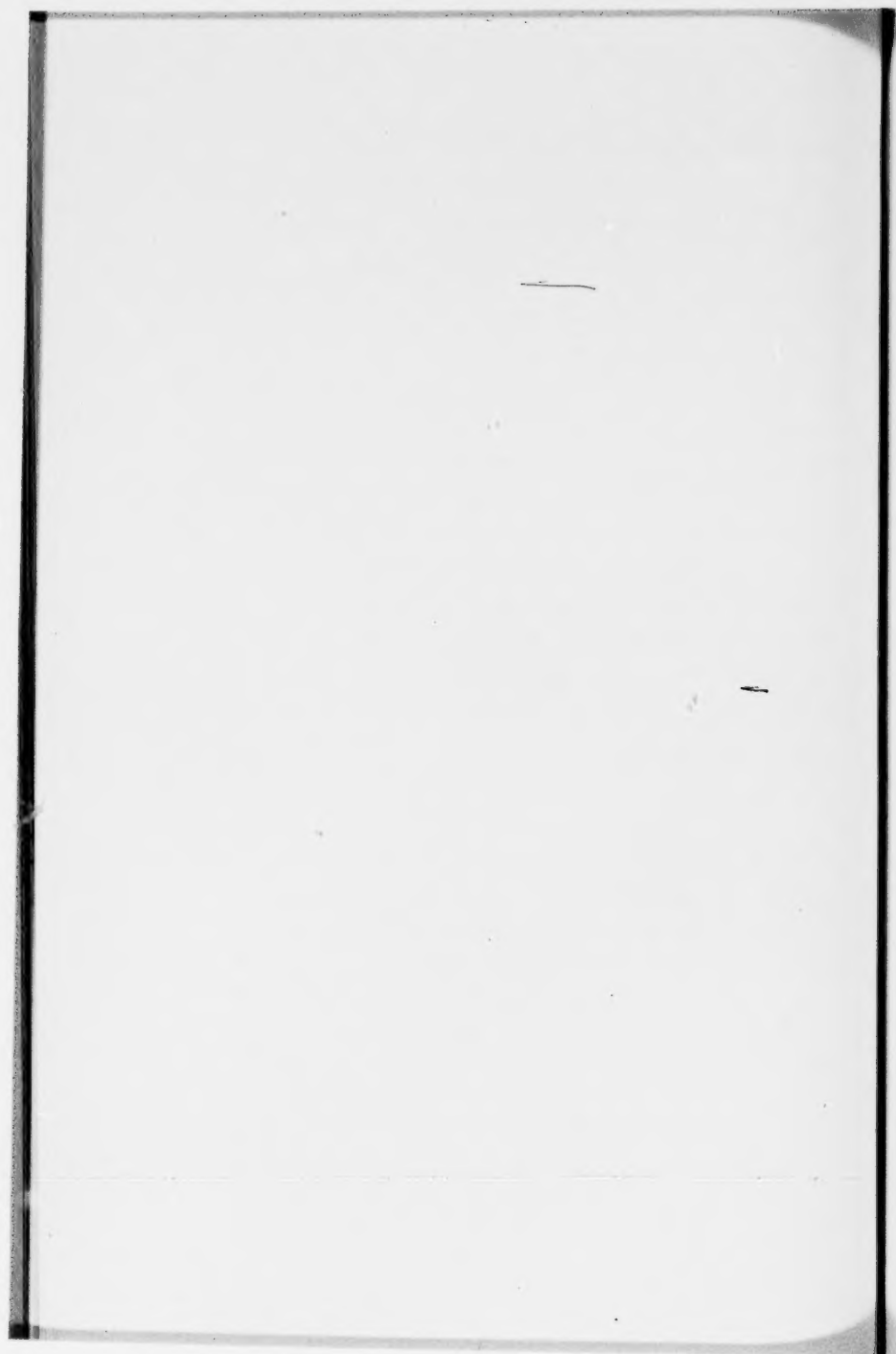
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PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal, State of California,
First Appellate District, Division One.



*To the Honorable the Chief Justice of the United States
and the Associate Justices of the Supreme Court of
the United States:*

Your petitioners respectfully pray that a writ of certiorari issue to review the order of the District Court of Appeal, State of California, First Appellate District, Division One, which denied the plaintiffs' petition for a writ of prohibition against the respondents herein from attempting to exercise jurisdiction over the International Ladies' Garment Workers' Union, a non-resident of California. And in support of their petition, the following is respectfully shown to this Honorable Court:

**A. SUMMARY AND STATEMENT OF THE
MATTER INVOLVED.**

The International Ladies' Garment Workers' Union (hereinafter referred to as the "International") is a voluntary unincorporated association and a bona fide labor union. David Dubinsky is the president and treasurer thereof, Frederick F. Umhey is its executive secretary and Louis Levy is one of its vice-presidents. The International is domiciled and resident in the State of New York. Under its constitution (Defts'. Ex. No. 14, Article I, Section 9), it is required to maintain its office in the City of New York. It does not engage in business.

There are affiliated with the International 325 local unions, located in various parts of the United States and Canada which have a combined membership of more than 285,000 persons. These locals are separate and distinct from the International and enjoy a large measure of autonomy. In San Francisco the knit goods workers comprise Local 191 of the International. (Record, p. 2.)

In 1937, Local 191 in San Francisco entered into a collective agreement with Gantner & Mattern Corporation

of California (hereinafter referred to as "the corporation"). The agreement expired by its terms, in 1939. After many months of negotiation for a new agreement, it became clear that the corporation did not intend to enter into an agreement on any basis suggested by Local 191. In March, 1940, Local 191 declared a strike against the corporation and undertook to boycott the corporation's products by advising the public of the facts involved in the dispute. In an effort to break that strike, the corporation sought to have its products manufactured in various factories operated by others in the East and Middle West.

To aid the strike, a group of citizens in New York City organized the "Gantner Mattern Strike Committee". It was headed by Louis Nelson, a resident of New York State, and manager of Knit Goods Workers' Union, Local 155, of New York City, which did not want goods made by its members to be used by the San Francisco corporation.

The Gantner Mattern Strike Committee in New York, and Local 191 of San Francisco, during the course of the strike, each separately (and never jointly) issued certain letters and leaflets which the corporation claims to constitute libels.

Naming the New York Local 155, the San Francisco Local 191, the Gantner Mattern Strike Committee, the International, and various individuals as co-defendants, the corporation filed its complaint (Exhibit A) against all of them in the Superior Court of the State of California for \$1,750,000 as compensatory and exemplary damages for alleged libels.

There is no allegation that the International, as such, published a libel anywhere relating to the controversy. The only utterance of the International in connection with the corporation or the strike against it was a resolution

adopted by its biennial Convention in New York City in June, 1940, approving a "vigorous national boycott against the products of Gantner & Mattern * * * conducted in such states where the same is lawful * * * and that there be given full and complete publicity everywhere to the facts involved in the dispute". Whatever the International did in connection with the strike was done "outside the boundaries of California". (Ex. D, pp. 61-62.)

The corporation's claim that jurisdiction over the International has been acquired is bottomed upon service of process upon the manager of the San Francisco Joint Board, a delegated body of representatives of local unions in California having power to transact the business of common interest to all of them; by service of process upon a former officer of the San Francisco Local 191; by service of process upon a member of that local, and upon two vice-presidents of the International (neither of whom is named in the title) who were in California not as vice-presidents but as officers of local unions in California which are affiliated with the International. (Ex. D, pp. 55-6.) The International appeared specially, as did the persons upon whom service was made, and moved the respondent Superior Court to quash the service. They contended that the attempt of the courts of California to exercise jurisdiction over the International would violate due process of law and decisions of the Supreme Court of the United States because (1) the International is a New York labor union which does not transact business in California; (2) that even if the International does transact business in California, the tort, with which it is charged took place outside of California and did not arise from business transacted by it in the state and hence it could not be constitutionally held amenable to jurisdiction in this suit; (3) that no service under existing California state statutes or the common law could constitu-

tionally be effected upon the International; and (4) that no jurisdiction could be acquired over the International because of acts done by its affiliated local in San Francisco. (Record, pp. 5-6.)

The motions to quash the services before the respondent Superior Court were all denied except the one involving Jennie Matyas as manager of Local 191, and as organizer and educational director of the International, on the ground that she had discontinued her position prior to the date of service. (Ex. C.)

The International filed a petition for a writ of prohibition in the District Court of Appeal of California directed against the respondent Superior Court to restrain it from attempting to exercise jurisdiction over the International. That petition was denied (by a 2 to 1 vote) without hearing and without opinion (one justice dissenting). Reargument was sought and was likewise denied (by a 2 to 1 vote). Thereafter, the International sought the transfer of this case to the Supreme Court of the State of California. The petition for transfer was denied without hearing and without opinion (by a 4 to 2 vote).

B. THE JURISDICTIONAL STATEMENT.

Jurisdiction of this Court over the subject matter appears from the facts above set forth. Decisions of this Court have established that it is a denial of due process for a court to assert jurisdiction over non-resident partnerships or foreign corporations with respect to acts committed out of the state and not arising out of acts done within the state even though the partnership or corporation be doing business in the state. The same rule should be applied to labor unions because the requirements of

due process are no different for the partnership or corporation than for the labor union.

Where a writ of prohibition is sought to prevent a court from acting without due process and that writ of prohibition is denied, this Court has held that it has jurisdiction to review the denial upon proceedings for writ of certiorari in this Court.¹

In *Bandini Petroleum Corp. v. Superior Court of the State of California*, 284 U. S. 8, 14, 76 L. Ed. 136, 144, Mr. Chief Justice Hughes said:

"This Court has jurisdiction. The proceeding for a writ of prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of Section 237(a) of the Judicial Code, U.S.C. Title 28, Section 344."

Under California law² a defendant objecting to jurisdiction of the State Court over him must not permit the case to go to trial but must seek a writ of prohibition to prevent such trial.

The statutory warrant which sustains the jurisdiction of this Court is Section 237(b) of the Judicial Code (28 U. S. Code, Section 344).

In the instant case respondent Court, in order to uphold the service upon the International, a foreign labor union, construed Sections 382, 388 and 411 of the California Code of Civil Procedure in such fashion as to render them

¹A writ of certiorari is properly directed to the state Court which holds the proceedings as part of its own records and exercises judicial power over them. (*Van Huffle v. Harkelrode*, 284 U. S. 225, 230; 76 L. Ed. 256, 260 (1931).) Where the highest court of the state has declined to review the judgment of an inferior or intermediate court, the writ is properly directed to the inferior or intermediate court, as the case may be. (*Adam v. Saenger*, 303 U. S. 59, 82 L. Ed. 649 (1938).)

²*Rensberg v. Hackney Mfg. Co.*, 174 Cal. 799, 801; 164 Pac. 792 (1917);

Jardine v. Superior Court, 213 Cal. 301, 305; 2 Pac. (2d) 756 (1931).

unconstitutional. (These sections are set out in full in the accompanying brief.) Subdivision (a) of said Section 237 supports the jurisdiction of this Court in the instance of the alleged unconstitutionality of a state statute.

The questions involved in this case are substantial. The suability of national and international unions (and in connection with the acts of locals) in the various state courts is a matter of grave importance. This Court has not heretofore specifically passed upon the point. The respondent Court has ruled upon the issue in such a way as to create a new doctrine discriminating against labor unions. It subjects labor unions to a different rule from that which applies to non-resident individuals or partnerships or foreign corporations. It holds that a labor union may be within the jurisdiction of the State Court under circumstances which this Court has held will not permit a constitutional exercise of jurisdiction over other persons.

This case, therefore, also comes within the meaning of subdivision 5 of Rule 38 of this Court, which provides that a writ of certiorari will be granted where there are important reasons therefor, such as

“(a) where a state court has decided a federal question of substance not theretofore determined by this court, or has decided in a way probably not in accord with applicable decisions of this court.”

This petition for a writ of certiorari is timely. The petition for a writ of prohibition in this case was filed in the District Court of Appeal on August 9, 1943, and denied by that Court on August 23, 1943. A petition for rehearing was filed, and denied by the Court on September 22, 1943. Petition for transfer to the California Supreme Court from the District Court of Appeal was denied by the Supreme Court on October 21, 1943.

Petitioner in the first instance consistently relied upon the position that the attempted exercise of jurisdiction

deprived it of due process. In a footnote³ we quote from the petition for a writ of prohibition filed in the California District Court of Appeal. (Record, p. 5.)

The District Court of Appeal entered an order denying the petition for writ of prohibition. (Record, p. 9.) No opinion was filed. However, the respondent Superior Court did render an opinion which is filed herein as Exhibit C. That opinion demonstrates that the principal reliance of petitioner at all stages rested upon its rights under the Federal Constitution. The first motion filed before the respondent Court (Exhibit B) expressly recites that the motion to quash service of summons would be based thereon. We quote therefrom in the footnote⁴

³"Said alleged libels, slanders and other improper acts so far as they concern said association did not take place in California and did not arise out of any business transaction or acts committed by said defendant association. Said respondent Court may not constitutionally or otherwise exercise jurisdiction over the person of said defendant association with respect to said alleged libels or slanders or improper acts set out in the complaint.

"Any attempt of respondent Court to exercise jurisdiction over said association would be in violation of decisions of the United States Supreme Court and the Fifth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of Article I of the Constitution of the State of California.

"Insofar as sections 388, 382 or 411 of the Code of Civil Procedure of the State of California are construed to provide for jurisdiction or service upon said association, the same and each of them are in violation of the constitutional provisions referred to above."

⁴"That said International Ladies' Garment Workers' Union and its said General Executive Board are not within the jurisdiction of this Court; that neither does any business in the State of California, and has no officer or agent therein upon whom any lawful or proper service of summons could be made. * * * That said * * * are resident in the State of New York. * * * to compel said association to appear in this action, more than 3,000 miles away from the place where it maintains an office and holds property, would be a violation of the Constitution of the United States and in particular the Fifth and Fourteenth Amendments thereof."

Respondent Court, recognizing that petitioning union rested its case on its constitutional right, said in its opinion (Ex. C, p. 15):

"The major premise of defendants' contention is that the United States Supreme Court has forbade, as a matter of due process of law, a State Court from assuming jurisdiction over non-resident associations or corporations upon a cause of action which did not arise within that state."

The Court reviewed the decisions of this Court upon which we relied and, as will be seen from the accompanying brief, in effect overrules them.

C. THE QUESTIONS PRESENTED.

The issues presented herein do not appear in any opinion of the District Court of Appeal since that Court did not grant any hearing or issue any opinion. However, the respondent Court rendered an elaborate opinion and discussed the decisions of this Court relied upon by petitioner, and concluded that they were inconsistent with the "majority rule" as established by state courts and the "consensus of annotations on the subject".

The questions involved in the proceedings in the Court below and upon this petition for a writ of certiorari may be listed as follows:

1. May a labor union, resident in New York, be held subject to the jurisdiction of a California state court under circumstances which this Court has held would not render a non-resident individual, partnership or a foreign corporation subject to such jurisdiction?

- (a) May a state court take jurisdiction over a non-resident labor union—an unincorporated association—with respect to a foreign tort where the tort does not arise

out of any business alleged to have been conducted by such labor union in such state?

2. Was it consistent with due process to construe certain statutes of the State of California so as to permit service upon a New York labor union, as to any cause of action, by service on merely (a) a member of one of its locals in San Francisco; or (b) an employee of a local board in San Francisco; or (c) upon so-called "vice-presidents" who were in California, not as such but in connection with their jobs on local unions or boards in San Francisco.

3. Was it consistent with due process to hold that the petitioning labor union was engaged in "doing business in the State of California" when its only activity was in aid of local organizations and at no time were commercial or for profit?

4. Was it not an abuse of due process to hold that the International was within the jurisdiction of the California state courts because of acts done by the San Francisco local or its manager? As there is no evidence to support any suggestion that the alleged torts arose out of business done by the International in California, was it proper to ignore the distinction between the local union and the International so as to treat the acts of the local as acts of the International and then assert jurisdiction over the International by reason of the acts of the local or its manager?

5. Was it contrary to due process to deny the motion to quash the said service of summons, and likewise to deny the writ of prohibition?

D. REASONS RELIED ON FOR ALLOWANCE OF WRIT.

This petition falls within the provisions of Supreme Court Rule 38, subdivision 5(a) in that:

1. A state court has decided a federal question of substance contrary to the applicable decisions of this Court. The respondent Court has in effect overruled certain decisions⁵ of this Court.

2. The effect of the decision below is to deny a labor union the benefit of the due process clause of the Constitution and to hold it subject to the jurisdiction of state courts under circumstances in which a non-resident individual or partnership or foreign corporation could not be held subject to the jurisdiction of a state court, and to permit service upon it contrary to due process.

3. The opinion of the respondent Court shows upon its face that it does not regard said decisions of this Court as binding and that the same can be overruled by what it calls the "consensus of annotations" based upon what it calls "the majority rule" established by conflicting state decisions.

4. The question of the jurisdiction of the State Court over the International and national unions, particularly in relation to acts of locals, is of great importance, and involves grave constitutional questions of due process. The precise situation has never been passed upon by this Court although in situations involving non-resident individuals or partnerships and foreign corporations, this Court rendered decisions which the respondent Court refused to apply.

Upon the foregoing grounds and in order to correct a decision that is unjust to petitioner and also discriminates against labor unions contrary to settled law, your petitioner prays that this Honorable Court will be pleased to

⁵These decisions and the opinion of the respondent Court refusing to apply them, are discussed in our brief at pages 15 and 22.

issue its writ of certiorari to the District Court of Appeal, State of California, First Appellate District, Division One, and to send to this Court for its review and adjudication the record and proceedings in the above entitled cause, and thereafter to make such order as may be just and proper.

San Francisco, California,
January 7, 1944.

EMIL SCHLESINGER,
S. HASKET DERBY,
JOSEPH C. SHARP,
Attorneys for Petitioners.

MATHEW O. TOBRINER,
DERBY, SHARP, QUINBY & TWEEDT,
Of Counsel.